IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 11TH SEPTEMBER 2007 / 20TH BHADRA 1929

WP(C).No. 25810 of 2007(V)

AGAINST THE ORDER DATED 24/07/2007 IN IA 2877/07 IN OS.681/2006 of PRINCIPAL SUB COURT,ERNAKULAM

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PETITIONER:

MADHANAN, S/O. KUMARAN,
MALAMKUZHIYIL, PANANGAD, ERNAKULAM DISTRICT.

BY ADV. SRI.T.B.THANKAPPAN
SMT.ALICE THOMAS

RESPONDENTS:

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1. SANTHOSH KUMAR, S/O. LATE VISWANATHAN,
THACHERIPPADATH HOUSE, PANANGAD.

2. A.M. THILOTHAMA, W/O.LATE VISWANATHAN,
THACHERIPPADATH HOUSE, PANANGAD.

3. USHA SUBRAMANIAN, W/O. SUBRAMANIAN,
VATTATHARA HOUSE, KOTHAD P.O., KORAMPADAM,
ERNAKULAM DISTRICT.

4. SHEELA MOHANAN, W/O. MOHANAN,
THOPPIL HOUSE, UDAYAMPEROOR, ERNAKULAM DISTRICT.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 11/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.Krishnan, J.

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W.P(C).No.25810 of 2007

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Dated this the 11th day of September, 2007.

JUDGMENT

This Writ Petition is filed to set aside the order of the Subordinate Judge, Ernakulam in I.A.No.2877 of 2007 in O.S.No.681 of 2006. Writ Petitioner had filed an application for getting himself impleaded as a party on the basis of an agreement to sell executed by the first defendant in favour of him. The court below found that he does not have any subsisting title to the property and therefore, he is not a necessary party and dismissed the application.

2. The suit is one for partition of the plaint schedule property by metes and bounds into four equal share and allow the plaintiff separate possession of ¼ share. According to the plaintiff, the property was purchased in the name of the mother by father and on his death, the property had devolved upon the plaintiff and other defendants. On the other hand, defendants would contend that the property is the self acquisition of the first

defendant and the plaintiff has no manner of right over the property and therefore the suit is liable to be dismissed. It is from the first defendant that the proposed party purchased the property.

3. It is true that there is an agreement to sell. It is well settled principle that an agreement to sell will not confer any right on the party. Further, it is for the plaintiff to decide the course of action. It is further held that for a proper determination of the case and resolving the dispute between the parties, the junction of the proposed party is not necessary because the dispute involved is regarding the question whether the property was purchased in the name of the mother by the father or whether it is the separate property of the mother. I do not find any ground to interfere with the decision rendered by the court below at this stage, especially when there is no averment to the effect that there is any collision between the plaintiff and other defendants. I make it clear that if at any stage it comes to the knowledge of the court by application or suo motu that there is collision , the court can certainly implead this party, so that his right is not defeated.

With this observation, the Writ Petition is dismissed.

M.N.Krishnan,
Judge.

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